

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned person.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 – 431.270, 532.130 – 532.140

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270, 532.130, 532.135, 532.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes preliminary and post execution procedures concerning the condemned person.

Section 1. Initial Steps After Receipt of Execution Order. (1) After the warden receives the execution order, the warden shall:

(a) Read the execution order to the condemned person; and

(b) If the condemned person received his death sentence prior to March 31, 1998, ask the condemned person to designate in writing his choice of the method of execution pursuant to KRS 431.220(1).

(2) For a warrant from the Governor, if the condemned person has not been tried or retried on or after July 13, 1990 in his capital case:

(a) The warrant shall be reviewed to determine whether it reflects that the condemned person has:

1. Been determined not to be an offender with a serious intellectual disability as defined in KRS 532.130(2); or

2. Procedurally defaulted or waived the determination of whether he is an offender with a serious intellectual disability.

(b) If the warrant does not reflect one (1) of the items indicated in paragraph (a) of this subsection, then the department shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person that the condemned person is not subject to execution if determined to be an offender with a serious intellectual disability as defined in KRS 532.130(2). The notice shall state that a court order is required for the execution to be suspended.

(3) For a mandate from a court, if the condemned person has not been tried or retried on or after July 13, 1990 in his capital case, then the department shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person that the condemned person is not subject to execution if determined to be an offender with a serious intellectual disability as defined in KRS 532.130(2). The notice shall state that a court order is required for the execution to be suspended.

(4) For any designation required to be made in writing in this administrative regulation, if the condemned person cannot see, read, or write sufficiently to complete his designation, then a staff person at the penitentiary shall:

(a) Ask the condemned person to state his designation;

(b) Write the designation stated by the condemned person;

(c) Read the designation as written to the condemned person; and

(d) Ask the condemned person to sign or make his mark on the document.

Section 2. Condemned Person's Designation of Witnesses. (1) The warden shall ask the condemned person to designate in writing his clergy witness and the three (3) other individuals

who may witness the execution pursuant to KRS 431.250.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately when the warden reads the execution order.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

Section 3. Condemned Person's Designation Concerning Property, Funeral, and Disposition of Body. (1) The warden shall ask the condemned person to designate in writing the person who may:

- (a) Collect the condemned person's personal property after his death;
- (b) Take charge of the condemned person's body; and
- (c) Make necessary funeral arrangements.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply at least forty-eight (48) hours prior to the time scheduled for the execution.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

(4) If the condemned person fails or refuses to designate a person to take charge of his body, burial shall be in accordance with KRS 431.270.

Section 4. Visitation Designation. (1) After an execution order has been issued, the warden shall ask the condemned person to designate in writing his minister of record.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately when the warden reads the execution order.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

Section 5. Limitations on Condemned Person's Clothing, State-issued Items, and Personal Property. Notwithstanding 501 KAR 6:020, CPP 17.1, CPP 14.2, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the warden may limit the condemned person's clothing, state-issued items, and personal property to the following:

- (1) One mattress;
- (2) Two sheets;
- (3) One pillow;
- (4) One pillow case;
- (5) One pair of scrub-type pants;
- (6) One scrub-type shirt;
- (7) One pair of underwear;
- (8) One pair of socks;
- (9) One toothbrush;
- (10) One tube of toothpaste;

- (11) One bar of soap;
- (12) One bath towel; and
- (13) One wash cloth.

Section 6. Limitations on Condemned Person's Clothing, State-issued Items, and Personal Property for Females. (1) Notwithstanding 501 KAR 6:020, CPP 17.1, CPP 14.2, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the warden may limit the condemned person's clothing, state-issued items, and personal property for a female to the items in Section 5 of this administrative regulation and the following:

- (a) One bra;
 - (b) Sanitary napkins; and
 - (c) Tampons.
- (2) The bra shall be white and if it contains stays or underwire, they shall be plastic.
- (3) The supply of sanitary napkins and tampons shall be in a sufficient quantity to allow the individual to maintain an acceptable level of personal hygiene.

Section 7. Transfer of Female Condemned Person. If the condemned person is female, she shall be transferred to the penitentiary for execution. The date of the transfer shall be determined by the warden.

Section 8. Securing Condemned Person's Personal Property Prior to Execution. (1) The warden shall inventory and secure any personal property of the condemned person prior to the execution.

- (2) The warden shall set the time for the removal of all personal property.

Section 9. Post-execution Steps. (1) The return on the judgment shall be made in accordance with KRS 431.260 within seven (7) days of the execution.

(2) If the condemned person does not make other arrangements, the department shall make arrangements for the delivery or burial of the body pursuant to KRS 431.270.

(3) The penitentiary shall call the person designated by the condemned person to pick up his personal property within three (3) days of the execution. If the person cannot be reached by phone, notice may be mailed to the person. (36 Ky.R. 1558; Am. 2087-M; 2038-A; eff. 5-7-2010; 39 Ky.R. 603; eff. 2-1-2013.)